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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 UNITED STATES OF AMERICA,

10 Plaintiff,

3:16-CR-0005-LRH-VPC

11 v.

ORDER

12 ANTHONY SCHNEIDER,

13 Defendant.

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16 Before the court is Defendant Anthony Schneider's motion to suppress.<sup>1</sup> ECF No. 30.<sup>2</sup>

17 The United States filed a response. ECF No. 34.

18 On November 17, 2015, Schneider was arrested for allegedly siphoning gasoline from  
19 vehicles and was taken to Washoe County Jail in Reno, Nevada. ECF No. 30; ECF No. 30-1 at 3.  
20 The following day, Detective Scott Johnson of the Reno Police Department interrogated  
21 Schneider in relation to a series of armed robberies, and Schneider made several incriminating  
22 statements. The Grand Jury eventually indicted Schneider for multiple counts of Interference

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24 <sup>1</sup> Schneider's counsel acknowledges that he filed the motion to suppress a week after the  
25 deadline set by the court's trial order. ECF No. 30 at 1. He explains that this untimeliness was  
26 due to a clerical error and difficulties in visiting his client in detention. Because of the  
27 constitutional concerns raised in the motion and the lack of opposition by or prejudice to the  
United States, the court will consider the motion.

28 <sup>2</sup> This citation refers to the court's docket number.

1 with Commerce by Robbery under 18 U.S.C. § 1951 and Use of a Firearm During and in  
 2 Relation to a Crime of Violence under 18 U.S.C. § 924(c)(1)(A)(ii). ECF No. 1.

3 At the interrogation's onset, Detective Johnson gave Schneider the following version of a  
 4 *Miranda* warning:

5 [Y]ou have the right to remain silent. Anything you tell me can be used in court.  
 6 You have the right to have an attorney, to have him with you before any  
 7 questioning, and if you can't afford an attorney, one will be provided for you  
 without cost . . . if you so choose.

8 ECF No. 30-1 at 2. As seen in this transcript excerpt, Detective Johnson informed Schneider that  
 9 he had the right to have an attorney present *before* questioning but did not inform Schneider that  
 10 he also had the right to have an attorney present *during* questioning. Schneider argues that this  
 11 *Miranda* warning was therefore deficient and violated his right to counsel under the Fifth  
 12 Amendment of the U.S. Constitution.

13 The United States agrees that this warning was deficient and that Schneider's statements  
 14 should be suppressed and thus excluded as substantive evidence in the government's case-in-  
 15 chief. ECF No. 34 at 1. However, the United States argues that, because Schneider voluntarily  
 16 made these statements, they would be admissible for impeachment purposes during cross-  
 17 examination of Schneider if he chooses to testify. Schneider did not file a reply and thus did not  
 18 oppose this assertion.

19 The court finds that both parties are correct that, because Detective Johnson failed to  
 20 inform Schneider of his right to counsel during questioning, the *Miranda* warning was deficient.  
 21 *See United States v. Noti*, 731 F.2d 610, 614 (9th Cir. 1984) (recognizing that the U.S. Supreme  
 22 Court "has repeatedly emphasized the critical importance of the right to know that counsel may  
 23 be present during questioning."). Because the exclusionary rule "bars the admission of evidence  
 24 obtained in violation of the Constitution," the United States may not use Schneider's  
 25 incriminating statements as substantive evidence. *United States v. Ramirez-Sandoval*, 872 F.2d  
 26 1392, 1395 (9th Cir. 1989) (citing *Nardone v. United States*, 308 U.S. 338, 341(1939)). But, as  
 27 the United States correctly asserts, the statements may be used to impeach Schneider if he  
 28 chooses to testify. *See Oregon v. Elstad*, 470 U.S. 298, 307 (1985) ("Despite the fact that

1      patently *voluntary* statements taken in violation of *Miranda* must be excluded from the  
2      prosecution's case, the presumption of coercion does not bar their use for impeachment purposes  
3      on cross-examination.”).

4            IT IS THEREFORE ORDERED that Schneider's Motion to Suppress (ECF No. 30) is  
5      GRANTED.

6            IT IS SO ORDERED.

7            DATED this 12th day of September, 2016.

  
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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE

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